

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Edward Tsigel	Team: Squad #16	CCRB Case #: 202103114	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/22/2021 11:45 AM	Location of Incident: New Jersey Avenue and New Lots Avenue	18 Mo. SOL 11/22/2022	Precinct: 75
Date/Time CV Reported Sun, 05/23/2021 1:39 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 05/23/2021 1:39 PM

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Adam Pawelic	00782	966766	075 PCT
2. POM Joshua Ganshaw	08463	966072	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jeremy Kostolni	07797	955024	075 PCT
2. POM Tyler Hamelburg	06029	963564	075 PCT
3. SGT Jonathan Metelus	04315	950883	075 PCT
4. POM Neel Basra	00382	966459	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Joshua Ganshaw	Abuse: Police Officer Joshua Ganshaw stopped the vehicle in which § 87(2)(b) was an occupant.	
B . POM Adam Pawelic	Abuse: Police Officer Adam Pawelic stopped the vehicle in which § 87(2)(b) was an occupant.	
C . POM Joshua Ganshaw	Force: Police Officer Joshua Ganshaw pointed his gun at § 87(2)(b)	
D . POM Adam Pawelic	Force: Police Officer Adam Pawelic pointed his gun at § 87(2)(b)	
E . POM Joshua Ganshaw	Abuse: Police Officer Joshua Ganshaw frisked § 87(2)(b)	
F . POM Joshua Ganshaw	Abuse: Police Officer Joshua Ganshaw searched § 87(2)(b)	
G . POM Joshua Ganshaw	Abuse: Police Officer Joshua Ganshaw searched the vehicle in which § 87(2)(b) was an occupant.	

Case Summary

On May 23, 2021, § 87(2)(b) filed this complaint on the CCRB website. On May 22, 2021, at 11:45 AM, § 87(2)(b) was driving his white Lincoln MKX SUV when Police Officer Joshua Ganshaw and Police Officer Adam Pawelic of the 75th Precinct pulled him over at New Jersey Avenue and New Lots Avenue in Brooklyn (**Allegations A and B – Abuse of Authority** – § 87(2)(g) PO Ganshaw and PO Pawelic exited their vehicle, approached § 87(2)(b) vehicle, and both pointed their guns at § 87(2)(b) (**Allegations C and D – Force** – § 87(2)(g) PO Ganshaw removed § 87(2)(b) from his vehicle and frisked him (**Allegation E – Abuse of Authority** – § 87(2)(g) PO Ganshaw then searched § 87(2)(b) and his vehicle (**Allegations F and G – Abuse of Authority** – § 87(2)(g)

No arrests were made, or summons issued as a result of this incident.

The CCRB received six Body Worn Camera (BWC) video of this incident (IA 38-43).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Joshua Ganshaw stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation (B) Abuse of Authority: Police Officer Adam Pawelic stopped the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that on May 22, 2021, at 11:45 AM, § 87(2)(b) (BR 01) was driving south on New Jersey Avenue in Brooklyn in his 2008 white Lincoln MKX SUV with § 87(2)(b) New Jersey license plate § 87(2)(b) and was pulled over by PO Ganshaw (BR 03) and PO Pawelic (BR 04) at the intersection of New Jersey Avenue and New Lots Avenue. He is the owner of this car and it is registered to him. § 87(2)(b) stated that he did not commit any vehicle traffic infractions prior to being pulled over.

At 11:45 AM, PO Ganshaw (BR 03) and PO Pawelic (BR 04) were on patrol in the 75th Precinct at the intersection of Pennsylvania Avenue and Dumont Avenue when they received a radio run of a verified 911 caller, § 87(2)(b) § 87(2)(b) who reported his vehicle was stolen. § 87(2)(b) described his vehicle as a white Lincoln MKX. Neither PO Ganshaw nor PO Pawelic remembered if the license plate of the vehicle, or if the manner in which the vehicle was stolen was mentioned. However, PO Pawelic remembered that the license plate was from out of New York State. The last known location of the Lincoln MKX was at the intersection of New Jersey Avenue and Livonia Avenue, which is located one block south and one block east of Pennsylvania Avenue and Dumont Avenue. PO Ganshaw and PO Pawelic drove to New Jersey Avenue and Livonia Avenue and arrived there approximately thirty seconds later. PO Ganshaw was familiar with what a Lincoln MKX looks like due to its distinct taillights and spotted a white Lincoln MKX down the block, driving south on New Jersey Avenue, approximately 100 to 200 feet away from the last known location. They turned on their lights and sirens and stopped § 87(2)(b) vehicle at the intersection of New Jersey Avenue and New Lots Avenue approximately 30 seconds later. PO Ganshaw and PO Pawelic both stated that they stopped § 87(2)(b) because they believed that his vehicle was the stolen vehicle mentioned in the radio run due to it matching the description and being in the vicinity of the last known location. They stopped § 87(2)(b) to determine whether his vehicle was the stolen vehicle from the radio run, and no other reason.

A screenshot from Google maps (BR 05) shows the route which PO Ganshaw and PO Pawelic took from when they received the radio run at Pennsylvania Avenue and Dumont Avenue, to where they pulled over § 87(2)(b) at New Jersey Avenue and New Lots Avenue.

From 0:00 to 1:05 of PO Ganshaw's BWC video (BR 06), PO Ganshaw pulls in front of § 87(2)(b) vehicle and exits his vehicle. He approaches § 87(2)(b) vehicle with his gun pointed at § 87(2)(b) through his driver side window. § 87(2)(b) is in his White Lincoln MKX (BR 02) mentioned above. PO Pawelic's BWC video (BR 07) is consistent with PO Ganshaw's BWC video and provides an alternative angle. At 0:10 of PO Pawelic's BWC video, the

license plate of § 87(2)(b) vehicle is seen § 87(2)(b) New Jersey plate § 87(2)(b)

In the 911 call (BR 08), the caller identified himself as § 87(2)(b) and provided his telephone number. He stated that he was currently in pursuit of his stolen vehicle, which he described as a white Lincoln with Texas plates which he did not know. § 87(2)(b) described the perpetrator as a 30-year old black female with “dreads.” He stated that the vehicle did not have a license plate on it when it was stolen and that the perpetrator put a Texas license plate on it. The last known location was at Hegeman Avenue and Pennsylvania Avenue. There were no additional details about the vehicle or the location in the 911 call.

At 0:25 of the radio communication recording (BR 08), central puts out that there is a 32 (auto larceny) at Hegeman Avenue and Pennsylvania Avenue. Between 0:50 and 2:30, central says that the owner is in pursuit of his white Lincoln with a Texas plate, which was stolen. He is on Hegeman Avenue and Livonia Avenue and he does not know the license plate number. At 2:30, central calls § 87(2)(b) and speaks to him. He states that he is in pursuit of his vehicle and he provides updates on his whereabouts. At 3:00, § 87(2)(b) further specifies that the white Lincoln is an MKX. Central tells the officers an updated description to include that it’s an MKX. At 3:40, § 87(2)(b) says that he is on Livonia Avenue and New Jersey Avenue. At 4:05, § 87(2)(b) says that he lost track of the stolen vehicle. At 5:30 an officer radios in that they have a vehicle stopped at New Jersey Avenue and New Lots Avenue that matches the description provided. Central never relayed the description of the perpetrator over the radio.

PO Ganshaw’s and PO Pawelic’s memo books (BR 09), and the event (BR 10) are consistent with the information discussed above.

People v. May 81 N.Y.2d 725 (BR 11) states that an officer may stop a vehicle to investigate criminal activity when he has a reasonable suspicion that its occupants have been engaged in conduct in violation of the law.

People v. Bennett, 37 A.D.3d 483 (BR 12) states that the police have reasonable suspicion to pursue, stop and detain an individual based upon contents of police dispatcher’s radio broadcast providing general description of a perpetrator which matches the description of that individual, the close proximity of defendant to site of crime, and the short passage of time between commission of crime and observation the individual.

People v. Glaze, 255 A.D.2d 932 (BR 13) states that when the police stop a motor vehicle because it fits the description of one used in a crime, the closer the stop in time to the commission of the crime and in distance to the location of the crime, the less important the detail of the description.

PO Ganshaw and PO Pawelic were provided a description of a stolen vehicle including the make, model, color, and license plate state, and were provided the last know location of that vehicle by a verified caller. The investigation confirmed that § 87(2)(b) vehicle matched the make, model, and color but did not match the state of the license plate of the description of the stolen vehicle. Based on the evidence discussed above, the officers pulled over § 87(2)(b) within one minute and fifty seconds of the initial radio run and within one block of the last reported location of the stolen vehicle. The investigation acknowledges that the license plate state of § 87(2)(b) vehicle did not match the reported state of the stolen vehicle’s plate, § 87(2)(g)

Moreover, although § 87(2)(b) provided a description of the perpetrator, this was never communicated to the officers over the radio and § 87(2)(b) vehicle’s windows were tinted, which made it difficult to see the driver. § 87(2)(g)

Allegation (C) Force: Police Officer Joshua Ganshaw pointed his gun at § 87(2)(b)

Allegation (D) Force: Police Officer Adam Pawelic pointed his gun at § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Joshua Ganshaw frisked § 87(2)(b)

It is undisputed that when § 87(2)(b) (BR 01) was pulled over, PO Ganshaw (BR 03) and PO Pawelic (BR 04) exited their vehicle, approached § 87(2)(b) vehicle and pointed their guns at him. PO Ganshaw pointed his gun at § 87(2)(b) through the driver window and PO Pawelic pointed his gun at § 87(2)(b) through the windshield. PO Ganshaw opened his door and told § 87(2)(b) to get out of the car. § 87(2)(b) exited the car and PO Ganshaw frisked him on his waistband and his front pant pockets.

PO Ganshaw (BR 03) and PO Pawelic (BR 04) both stated that when a vehicle is pulled over for being stolen, it is considered to be a “felony car stop.” Based on their experience, during “felony car stops” there is a high possibility that the perpetrators possess weapons. They both stated that in the NYPD academy they were taught to draw and point their firearms at individuals during all “felony car stops.” § 87(2)(b) windows were tinted and the officers could not see into the vehicle or what § 87(2)(b) was doing. They stated that they pointed their firearms at § 87(2)(b) because it was a “felony car stop” and there was a possibility that § 87(2)(b) had a weapon on him. There was no other reason that they pointed their guns at § 87(2)(b) Other than the reason mentioned above, neither officer had any specific reason to believe that § 87(2)(b) was armed with a weapon. They did not receive any information about the nature in which the vehicle was stolen or if there was any weapon involved during the crime. They had no specific reason to fear for their safety or the safety of others other than the reason mentioned above.

PO Ganshaw (BR 03) stated that once § 87(2)(b) exited the car, he conducted a frisk for the purpose of checking if § 87(2)(b) had a weapon on him for the officer’s safety. He conducted the frisk for the same reason discussed above. PO Ganshaw did not see any bulges which were indicative of weapons on § 87(2)(b) and did not have any specific reason to believe that § 87(2)(b) was armed with a weapon. PO Ganshaw did not ask for permission to frisk him, nor did § 87(2)(b) voluntarily provide consent to frisk him.

PO Ganshaw’s and PO Pawelic’s BWC video’s (BR 06 and BR 07 respectively) are consistent with their testimony. At 0:55 of PO Ganshaw’s BWC video, PO Ganshaw exits his vehicle, approaches § 87(2)(b) vehicle, and points his gun at him through the driver window for eighteen seconds. At 1:10, he opens the driver door and tells § 87(2)(b) to exit the car. § 87(2)(b) has his hands up in full view and PO Ganshaw continues to point his gun at him for eight seconds. At 1:18, PO Ganshaw aims his gun at the floor and holsters it. At 1:30, § 87(2)(b) exits his vehicle and PO Ganshaw frisks § 87(2)(b) waistband area. From 0:00 to 0:35 of PO Pawelic’s BWC video, PO Pawelic exits his vehicle, approaches § 87(2)(b) vehicle from the front, and points his gun at him through the windshield for twenty-four seconds. At 0:23, § 87(2)(b) puts his hand up in clear view and PO Pawelic continues to point his gun at him for twelve seconds before lowering it.

According to the NYPD trainings on known risk vehicle stops (BR 14, pages 17 and 18) and force options (BR 15, Page 6) which PO Ganshaw and PO Pawelic both received while in the academy in 2018, officers are not required to use the force options available to them in any particular order. A known risk vehicle stop is when probable cause or reasonable suspicion of a crime exists for either the vehicle in question or one or more of its occupants. Upon conducting a known risk vehicle stop, officers are instructed to take a defensive tactical stance, using their vehicles as cover, and using their professional judgement to determine if they need to draw and point their firearm towards the threat or threat area. The training does not use the term “felony car stop,” or instruct officers to point their firearms at the threat during all known risk vehicle stops.

NYPD Patrol Guide Procedure 221-01 (BR 16) explains that drawing a firearm prematurely and unnecessarily limits an officer’s options in controlling a situation and may result in an unwarranted or accidental discharge; therefore, the decision to display or draw a firearm should be

based on an articulable belief that the potential for serious physical injury is imminently present. When a uniformed member of the service determines that the potential for serious physical injury is no longer present, the uniformed member of service will holster the firearm as soon as practicable.

People v. De Bour, 40 N.Y.2d 210 (BR 17) if a police officer develops a reasonable suspicion that a person is armed and dangerous, the officer may frisk the person for a deadly weapon. Reasonable suspicion that a person is armed and dangerous may arise from the officer's observations or the facts and circumstances of the encounter including, reasonable suspicion that the suspect has committed, is committing, or is about to commit a violent crime (e.g., assault with a deadly weapon, burglary, rape, robbery, etc.), or an observation of something on the person that the officer reasonably suspects is a weapon.

PO Ganshaw and PO Pawelic testified that they pointed their guns at § 87(2)(b) because they conducted a "felony car stop" which led them to believe he could have been armed with a weapon. Additionally, they stated that they received training in the academy which instructed them to draw and point their weapons during all "felony car stops." Neither PO Ganshaw nor PO Pawelic made any observation or received any indication that § 87(2)(b) was armed with a weapon. Neither officer could provide a specific articulable reason for which they feared for their own or anyone else's safety or believed there was an immediate threat of serious physical injury occurring. As mentioned above, the training that PO Ganshaw and PO Pawelic received in the academy did not specify that they need to point their guns at the threat during every known risk vehicle stop and must use their professional judgement in determining whether to do so. Furthermore, PO Ganshaw and PO Pawelic both continued to point their guns at § 87(2)(b) for eight and twelve seconds respectively after § 87(2)(b) raised his hands above his head in clear view.

§ 87(2)(g)

§ 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Joshua Ganshaw searched § 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer Joshua Ganshaw searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that after § 87(2)(b) (BR 01) was frisked, PO Ganshaw (BR 03) asked § 87(2)(b) where his identification was and he said it was in his pocket. PO Ganshaw asked if he could get it and § 87(2)(b) said yes. PO Ganshaw entered § 87(2)(b) front right pant pocket, took out his wallet and took out his driver's license from the wallet. PO Ganshaw did not enter any other pockets. § 87(2)(b) asked what he was pulled over for and PO Ganshaw told him that there was a report of a stolen vehicle matching the description of his vehicle. PO Ganshaw asked § 87(2)(b) if the car was his and § 87(2)(b) said that it was. PO Ganshaw asked § 87(2)(b) where the vehicle registration was and he said that it was in the glove compartment. PO Ganshaw asked him if he could get it from the glove compartment and § 87(2)(b) said yes. PO Ganshaw entered the vehicle, opened the glove compartment, and took the vehicle registration out. PO Ganshaw did not search or enter any other area in the car. PO Ganshaw looked at the license and registration and determined that the vehicle belonged to § 87(2)(b). He handed § 87(2)(b) back his license and registration, explained the reason for the vehicle stop again, and told him that he was free to go. PO Pawelic (BR 04) gave § 87(2)(b) his business card and the officers left the scene.

PO Ganshaw's BWC video (BR 06) is consistent with the testimony mentioned above. Between 1:35 and 1:50, PO Ganshaw asks § 87(2)(b) if he can go into his pocket to get his identification, § 87(2)(b) says yes, and PO Ganshaw takes § 87(2)(b) identification out of his pocket. Between 1:50 and 2:45, PO Ganshaw asks § 87(2)(b) if he can go into the glove compartment to get his vehicle registration, § 87(2)(b) says yes, and PO Ganshaw takes the registration out of the glove compartment. Between 2:45 and 4:47, PO Ganshaw analyzes § 87(2)(b) identification and vehicle registration and determines that he owns the vehicle. The officers explain the reason for the vehicle stop and let § 87(2)(b) go.

The stop report (BR 23) prepared by PO Ganshaw states that PO Ganshaw requested consent and § 87(2)(b) provided consent.

NYPD Patrol Guide Procedure 212-11 (BR 18) states that a level 3 Terry stop may be conducted only when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or Penal Law misdemeanor. The police officer may ask accusatory or pointed questions and detain the person while an expeditious investigation is conducted to determine if there is probable cause to arrest the person. The police officer may seek consent to search. The consent must be voluntarily given.

People v. Gonzalez, 39 N.Y.2d 122 (BR 19) states that an exception to the warrant requirement and to the requirement of probable cause to search, is voluntary consent to the search. Consent to search is voluntary when it is a true act of the will, an unequivocal product of an essentially free, and unconstrained choice.

New York City Administrative Code 14-173 (BR 24) states that in order for an officer to request and obtain voluntary consent to search a subject, their vehicle, their property, or their home, the officer must first articulate to the subject of the search that they are being asked to consent to such search voluntarily, knowingly, and intelligently, and explain that such search will not be conducted if they refuse to provide consent to such search.

PO Ganshaw was allowed to request consent to search § 87(2)(b) and his vehicle for investigative purposes. Video evidence shows that § 87(2)(b) provided consent to search him and his vehicle, however, PO Ganshaw did not clearly articulate to § 87(2)(b) that he was being asked for voluntary consent, and that § 87(2)(b) had the option to refuse a search and that one would not be conducted if he refused. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 20).
- Police Officer Joshua Ganshaw has been a member of service for three years and has been a subject in three CCRB complaints and seven allegations, of which one was substantiated:
 - 201909576 involved a substantiated allegation of search of person against PO Ganshaw. The Board recommended command discipline A and the NYPD has not yet imposed discipline. § 87(2)(g)
- Police Officer Adam Pawelic has been a member of service for three years and has been a subject in three CCRB complaints and ten allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of April 4, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (BR 21).

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Squad: 16

Investigator:	<u>Edward Tsigel</u>	<u>Investigator Edward Tsigel</u>	<u>5/6/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Patrick Yu</u>	<u>IM Patrick Yu</u>	<u>05/11/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date